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Forest Service NEWS



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FOR IMMEDIATE RELEASE

U.S. DISTRICT COURT LIFTS FOREST SERVICE HERBICIDE BAN

PORTLAND, May 24--The U.S. District Court in Portland today lifted the 1984 court injunction that banned the USDA Forest Service from using herbicides in their vegetation management programs on National Forests in Oregon and Washington. A joint motion to dissolve the herbicide injunction and dismiss the complaint was presented to Judge James M. Burns after parties to the lawsuit reached a successful mediated agreement over outstanding issues with the agency's Final Environmental Impact Statement for vegetation management.

The mediated agreement brings successful closure to a long-standing dispute over the use of herbicides on National Forest lands in the Pacific Northwest. "We are pleased at the success of mediating an agreement with the parties involved in the injunction," said Regional Forester James F. Torrence. "We appreciate the intensive effort made by everyone in reaching this agreement over how we will implement the environmental impact statement."

Principal participants in the dispute included Paul Merrell; Northwest Coalition for Alternatives to Pesticides (NCAP); Oregonians for Food and Shelter (OFS); and the Forest Service. The parties have been engaged in mediation since March. The mediation process was conducted by three independent mediators. They were Elaine Hallmark, founding partner of Confluence, a law firm specializing in dispute resolution; Bryan Johnston, Director of the Center for Dispute Resolution, Willamette University College of Law; and Sid Lezak, counsel with Portland law firm of Newcomb, Sabin, et al. In addition, legal counsel for NCAP was provided by Ralph Bradley of Bradley and Gordon, and John DiLorenzo of O'Connell and Goyak represented OFS. Their success culminated today when all parties jointly petitioned the court to dismiss its 1984 injunction.

(more)

The negotiators who took part in the mediation process were Paul Merrell; Mary O'Brien and Norma Grier from NCAP; Terry Witt from OFS; and Dave Caraher and Mike Schafer from the Forest Service. In reflecting on the success of mediation, all of the parties expressed high praise for the mediators, who worked without compensation. "Elaine Hallmark, Bryan Johnston, and Sid Lezak deserve a great deal of credit," said Allan Brock, U.S. Dept of Justice Attorney representing the Forest Service. "They are a highly professional team and were an enormous help in reaching a settlement."

Issues mediated by all parties revolved around joint expectations of how the Forest Service will implement its vegetation management program. In addition, other issues included the kinds of information the agency will provide to the public and employees about vegetation management methods and their principal environmental and human health risks, and the process for developing and incorporating new information about vegetation management methods, their usefulness, and effects.

The Final Environmental Impact Statement for "Managing Competing and Unwanted Vegetation" was prepared in an effort to complete a worst case analysis and a comprehensive human health risk assessment for the vegetation management program. Herbicides, along with manual, mechanical, prescribed burning and biological methods, are used to treat unwanted and competing vegetation in many land management activities such as controlling vegetation that competes with young conifer seedlings, clearing away roadside brush, controlling vegetation on and around research sites, and eliminating noxious weeds.

Lifting of the injunction allows the Forest Service to consider using herbicides as a tool in treating unwanted and competing vegetation on the National Forests in Oregon and Washington. The Final Selected Alternative in the Environmental Impact Statement allows for all vegetation management tools to be available, but emphasizes prevention of vegetation management problems. Herbicides will be used only when necessary.

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MANAGING COMPETING AND UNWANTED VEGETATION
USDA Forest Service
Pacific Northwest Region

SUMMARY OF THE MEDIATED AGREEMENT

The following is a summary of the Mediated Agreement and relevant court documents that developed through court-approved and arranged mediation of the Final Environmental Impact Statement for Managing Competing and Unwanted Vegetation.

PARTIES TO COURT INJUNCTION AND MEDIATION:

- Northwest Coalition for Alternatives to Pesticides - Plaintiffs
- Paul Merrell - Intervenor for the Plaintiffs
- Oregonians for Food and Shelter - Intervenor for the Defendants
- Forest Service - Defendants

EVENTS THAT LEAD TO MEDIATION:

JULY 13, 1983 - Lawsuit filed in Portland U.S. District Court by Northwest Coalition for Alternatives to Pesticides (NCAP), Oregon Environmental Council, and Audubon Society of Portland against the Forest Service, Bureau of Land Management, and the Environmental Protection Agency claiming that the agencies programs for managing competing and unwanted vegetation were not in compliance with NEPA. Oregonians for Food and Shelter (OFS), an organization representing the business community, intervene on behalf of the government agencies.

MARCH 14, 1984 - U.S. District (Judge James M. Burns) in Portland rules that the defendants had not prepared an adequate Worst Case Analysis pursuant to their NEPA obligations. An injunction against the use of herbicides in the Pacific Northwest Region of the Forest Service and BLM Districts in the State of Oregon was issued, to be in effect until agency obligations were fulfilled.

Responding to the Court's directive, the Forest Service and BLM prepared a comprehensive human health risk assessment for the use of herbicides, including a Worst Case Analysis. This was intended to be a part of a Supplement to the 1981 FEIS. However after preparing the risk assessment, the Forest Service determined that a new EIS for the Region's vegetation management program was needed.

JUNE 17, 1986 - Notice of Intent published in Federal Register to prepare an Environmental Impact Statement for a proposed vegetation management program on National Forest lands in Oregon and Washington.

OCTOBER 15, 1987 - Notice of Availability of the Draft EIS published in Federal Register. Public given 120-day review/comment period. Nearly 5,000 letters of response received.

DECEMBER 8, 1988 - Forest Service publishes Final Environmental Impact Statement and Record of Decision. Alternative "H" selected as the final alternative. "Alternative H" allows for all tools to be available, emphasizes prevention, protecting human health, promoting long-term health and productivity of forest ecosystems, and meeting goals and objectives of land management plans. Non-herbicide tools are preferred. Herbicide use requires special considerations. Forty-five day administrative appeal period begins.

DECEMBER 23, 1988 - Notice of Availability published in Federal Register listing Record of Decision and Final Environmental Impact Statement for Managing Competing and Unwanted Vegetation.

JANUARY 23, 1989 - End of administrative appeal period for the Final Environmental Impact Statement for Managing Competing and Unwanted Vegetation. Twelve appeals are submitted. Ten received from environmental interests, one received from industry interests, and one received from eastern Oregon citizen.

JANUARY 24, 1989 - Forest Service files motion with U.S. District Court, based on fulfilling the court's directive to prepare Worst Case Analysis and comprehensive human health risk assessment for use of herbicides, asking the court to dissolve the court's previous order enjoining the Secretary of Agriculture from using herbicides within the Forest Service's Region Six.

FEBRUARY 6, 1989 - Plaintiffs (Northwest Coalition for Alternatives to Pesticides) noticed its opposition to Forest Service motion based on their belief that the FEIS is still not in compliance with NEPA. Also at this time Paul Merrell sought to intervene on behalf of the plaintiffs.

FEBRUARY 15, 1989 - Recognizing that a better way must exist for resolving the dispute, Judge James M. Burns (under Rule 16) ordered all parties to the injunction into court-approved and arranged mediation (settlement conference).

MARCH 1, 1989 - Parties enter mediation process with the assistance of three mediators. Numerous meetings took place among the participants in March and April culminating in agreement.

MAY 24, 1989 - Parties to the mediation process meet in Judge Burns' chambers and sign the Stipulated Order that was developed in the court-approved and arranged mediation.

MAY 24, 1989 - All parties to the negotiated mediation process file a joint motion with the U.S. District Court in Portland to dissolve the herbicide injunction and dismiss the complaint.

MAY 24, 1989 - Judge James M. Burns signs order dissolving herbicide injunction and dismissing complaint against the Secretary of Agriculture.

MEDIATION DOCUMENTS:

These court documents were developed by the negotiation members and the attorneys during the mediation process. Documents presented to the court included:

- Joint Motion to Dissolve Injunction and Dismiss Complaint with Prejudice
- Stipulated Order - which contains:
 - * Mediated Agreement
 - * Exhibit A to the Mediated Agreement

JOINT MOTION TO DISSOLVE INJUNCTION AND DISMISS COMPLAINT WITH PREJUDICE:

All parties to the negotiated mediation process presented the Joint Motion to the U.S. District Court which moves the court to dissolve the herbicide injunction and dismiss the plaintiffs' (NCAP) and intervenor's (Merrell) complaints against the vegetation management program of the Forest Service upon the terms of the accompanying Stipulated Order.

STIPULATED ORDER:

Parties to the mediation request through this Stipulated Order that the court do the following:

- Grant Paul Merrell's motion to intervene.
- Approve the terms of the Mediated Agreement, and incorporate them as part of this order.
- Recognize that the court shall not retain jurisdiction for supervising compliance under the Mediated Agreement.
- Provide that the terms of the Mediated Agreement represent obligations of the Forest Service that are enforceable by the parties to it and subject to judicial review.
- Conclude that no controversy remains among the parties to this action regarding the ROD and FEIS.
- Conclude further that defendants' motion dated 1/24/89 is moot.
- Dissolve the prior order in this action enjoining the Forest Service from implementing the ROD.
- Dismiss the complaints in this action.
- Provide that Paul Merrell does not forego his rights to future litigation with the Siuslaw National Forest.
- Each party is to bear its own attorneys fees, expenses, and costs.

MEDIATED AGREEMENT:

Mediated Agreement in the Stipulated Order lists the specifics of what was agreed upon by all parties during the numerous meetings. Included in the final Mediated Agreement are the following specifics:

1. In implementing the Record of Decision, the Forest Service shall comply with provisions set out in the accompanying document, entitled "Exhibit A to Mediated Agreement." Exhibit A contains three parts: Program Implementation; Information Packages; and Process for New Information.
2. Each party agrees to be bound by the terms of the mediated agreement.
3. The Forest Service adopts as part of its administrative practice Exhibit A, and will issue within six months written directives to insure that Exhibit A's provisions are recognized by personnel as being incorporated into the agency's administrative practice.
4. All parties are entitled to maintain an action to enforce or seek judicial review of compliance with the mediated agreement.
5. If any dispute should arise, parties shall notify the Regional Forester in writing prior to initiating any legal proceedings.
6. Parties agree that Paul Merrell be granted his application to intervene.
7. All parties (NCAP, OFS, and Merrell) shall join the Forest Service in a joint motion asking the court to dissolve the herbicide injunction and dismiss the complaints.
8. Parties to the mediation will withdraw their administrative appeals upon the court dissolving and dismissing the complaint against the agency.
9. The Forest Service and Paul Merrell intend to further discuss how to manage vegetation in the Siuslaw NF with the aim of avoiding any subsequent litigation.
10. This agreement only applies to how the Forest Service implements its Record of Decision.
11. Any material prepared by any party or its attorney leading to this agreement, shall not be offered for any purpose in any administrative or judicial proceeding.
12. Provides that third parties may seek judicial review of the agency's compliance with Exhibit A, but only upon an agency action that injures or threatens an otherwise legal interest.
13. If a third party attempts to bring an action challenging the adequacy of the FEIS or ROD, parties here agree that no provision of the mediated agreement should be used against the agency.
14. Parties consent to the mediated agreement upon entry by the court of the stipulated order.
15. Parties are to bear their own attorneys fees, expenses, and costs.

EXHIBIT A: "COMPONENTS FOR IMPLEMENTATION PLANS"

"Exhibit A" to the Mediated Agreement consists of three parts as follows:

PART I: PROGRAM IMPLEMENTATION - this section outlines joint expectations among the parties about how the vegetation management program will be implemented. The agreement covers only those aspects of the program that were of specific concern to the parties. Therefore, it is not a complete description of how we will implement the program, and the Forest Service expects to be adding material to this outline as we develop complete implementation plans.

- A. Clarifies three important terms used in the Record of Decision.
 - what we mean by "prevention" (of vegetation management problems) as opposed to "early treatment."
 - expectations regarding amount of treatment.
 - what we mean when we say "2,4-D would be used only as a last resort."
- B. Describes some of the role of the Regional Coordinator (for Vegetation Management).
- C. Outlines some of the steps essential to site-specific analysis.
- D. Outlines basic points of public participation in developing vegetation management projects.
- E. Outlines monitoring and evaluating for vegetation management programs and projects.

PART II: INFORMATION PACKAGES - this section outlines joint expectations for the kinds of information we will provide to Forest Service staff and the public about vegetation management methods, and their principal environmental and human health risks.

- A. Describes information packages.
- B. Identifies specific kinds of information for vegetation management methods.
- C. Identifies information topics for describing herbicide use.

PART III: PROCESS FOR NEW INFORMATION - describes joint expectations for developing and incorporating new information about vegetation management methods.

- A. Describes the Region's process for continuing to develop and incorporate new information about vegetation management methods, their usefulness, and effects.

B. Outlines current need for more information about:

- 2,4-D contaminants
- 2,4-D and Malignant Lymphoma
- inert ingredients of herbicides
- acute toxicity of herbicide full formations
- detecting herbicides in water
- burning herbicide treated sites
- pesticides in soil

APPEALS STATUS

The Reviewing Officer (Chief) again extended the due date for all appellants to submit their Statement of Reasons. The appellants reasons are due two weeks from the date a mediated agreement is signed by the Forest Service and parties to the mediation or the court is notified that an agreement cannot be reached.

Presently, only one of the twelve appellants (Jan and Tim Kerns/Kerns Rainbow Ranch, Baker, Oregon) has submitted their Statement of Reasons. They have appealed our proposed use of Tordon and have requested that it be dropped from the list of available herbicides. Their appeal is currently being reviewed by the Deciding Officer.

MANAGING COMPETING AND UNWANTED VEGETATION
USDA Forest Service
Pacific Northwest Region

QUESTIONS AND ANSWERS REGARDING THE
COURT INJUNCTION
MEDIATED AGREEMENT
AND
FUTURE PROGRAM FOR VEGETATION MANAGEMENT

WHY WAS THERE A MEDIATED SETTLEMENT?

The mediation process was arranged by the court. Judge James M. Burns of the U.S. District Court in Portland ordered the parties to the 1984 herbicide injunction into mediation when the plaintiffs (NCAP) opposed a motion that the Forest Service filed in January to lift the herbicide injunction.

WHO WAS INVOLVED?

Parties to the negotiated mediation were: Northwest Coalition for Alternatives to Pesticides (plaintiffs); Paul Merrell (intervenor for the plaintiffs); Oregonians for Food and Shelter (intervenor for the defendants); and Forest Service (defendants). The mediation process was conducted by three independent mediators. They were Elaine Hallmark, founding partner of Confluence - Using Conflict Creatively, a law firm specializing in dispute resolution; Bryan Johnston, Director of the Center for Dispute Resolution, Willamette University College of Law; and Sid Lezak, counsel with Portland law firm of Newcomb, Sabin, et al.

WHAT WAS DISCUSSED DURING MEDIATION?

Discussions centered around joint expectations of how the Forest Service will implement the Record of Decision and the Final Selected Alternative. Other issues of discussion included: 1) the kinds of information the Forest Service will provide to the public and employees about vegetation management methods and their principal environmental and human health risks; and, 2) the process for developing and incorporating new information about vegetation management methods, their usefulness, and effects.

HOW SOON WILL YOU BEGIN USING HERBICIDES?

Before any treatment method for managing competing and unwanted vegetation will be used, including herbicides, certain activities must first happen. These actions include site-specific analysis and public participation. We do not expect to begin implementing the Selected Alternative before the planning and public involvement has been completed for each proposed project.

HOW MANY ACRES WILL BE SPRAYED?

The actual acreage to be treated with herbicides will depend on the outcome of analysis of treatment options for specific individual sites. The total acreage will not be determined until planning and public involvement has been completed for all potential treatment areas.

WHAT HERBICIDES WILL YOU USE?

Of the sixteen herbicides considered in the FEIS, thirteen were judged to have acceptable quality of information, and manageable risks to human health and environmental quality to be available for use. Their effectiveness and cost-efficiency will be analyzed on a site-specific basis before any would actually be selected. 2,4-D would only be used as a last resort.

HOW DOES THE MEDIATION AGREEMENT CHANGE THE RECORD OF DECISION FOR THE VEGETATION MANAGEMENT FEIS?

No supplement or revisions to the current FEIS and ROD will be issued. The mediated agreement outlines mutual expectations of specific aspects of the FEIS implementation, kinds of information that will be provided to Forest Service staff and the public, and the process for developing and incorporating new information on methods.

WHAT HAPPENS NEXT?

Regional staff will assemble teams of specialists from both within and outside the agency to develop field procedures and direction for key implementation topics addressed in the Record of Decision. These procedures and direction will then be distributed to the National Forests and to interested publics.

HOW WILL THE AGREEMENT BE MONITORED AND ENFORCED?

The parties to the mediation are entitled to seek review and compliance with the agreement. In case of a dispute, the party shall notify the Regional Forester in writing prior to initiating any legal proceedings.

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FOR IMMEDIATE RELEASE

AUG 12 1984

FINAL ALTERNATIVE APPROACHES FOR SPOTTED OWL HABITAT MANAGEMENT RELEASED

Portland, August 12 - The final Environmental Impact Statement (FEIS)

addressing standards and guidelines for managing the habitat of the spotted owl on National Forests in Oregon and Washington is being released this week by the U.S. Forest Service Pacific Northwest Region. A decision on the alternatives in the FEIS will be made after a thirty day public review period.

According to Regional Forester Vic Forester, "This document bridges the path from draft to final forest plans on the 13 forests that contain spotted owl by presenting the best alternatives for spotted owl habitat management."

The FEIS addresses seven alternative approaches to managing the viability of spotted owl habitat with other uses of forest resources. The selected alternative will supplement the regional guide for forest planning which was completed in 1984, by providing immediate direction for spotted owl habitat management on the 13 National Forests that have spotted owl. This direction will be incorporated into forest plans as they are completed during the next year.

Because of the great public interest in the spotted owl, Forest Service Chief F. Dale Lohrman is giving the public additional time to review and comment on the FEIS before making a final decision on the alternatives. The comment period begins August 12 and will last 30 days. During this time the public is invited to review the documents at any of the 19 National Forest offices in Oregon and Washington.

Written comments on the FEIS may be mailed to Regional Forester, U.S. Forest Service, Pacific Northwest Region, P.O. Box 3625, Portland, OR 97208, or by hand to the Regional Office, 1001 1st St., Portland, OR 97208.